United Nations A/66/399

General Assembly

Distr.: General
3 October 2011

Original: English

Sixty-sixth session
Agenda item 143
Administration of justice at the United Nations

Letter dated 23 September 2011 from the Presidents of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal to the President of the General Assembly

We have the honour to write to you, on behalf of the judges of the United Nations Appeals Tribunal and the United Nations Dispute Tribunal, to express to the General Assembly our concern regarding recommendations on the procedure for the amendment of the rules of procedure of the Tribunals, as contained in the report of the Secretary-General (A/66/275) and in the report of the Internal Justice Council (A/66/158) regarding item 143 of the agenda, entitled "Administration of justice at the United Nations".

In paragraph 250 of his report, the Secretary-General "recommends that the General Assembly encourage the Tribunals to consult with the parties appearing before them when making amendments to their rules of procedure". In paragraph 58 of its report, the Internal Justice Council recommends a procedure for consultation by posting the proposed amendments on the Tribunals' section of the website of the Office of Administration of Justice and inviting interested parties to comment.

The judges would first like to recall that article 6, paragraph 1, of the statute of the Appeals Tribunal and article 7, paragraph 1, of the statute of the Dispute Tribunal provide that the Tribunals shall establish their own rules of procedure, which shall be subject to approval by the General Assembly, thereafter listing mandatory provisions these rules are to contain. Article 32 of the rules of procedure of the Appeals Tribunal and article 37 of the rules of procedure of the Dispute Tribunal further state that the Tribunals "in plenary meeting may adopt amendments to the rules of procedure, which shall be submitted to the General Assembly for approval". Paragraph 2 of both provisions further provides that the "amendments shall operate provisionally until approved by the General Assembly".

It follows that the General Assembly has foreseen a very clear procedure for the amendment of the rules. Under this procedure, amendments are adopted by the Tribunals, applied provisionally and submitted to the Assembly for approval. The procedure does not include any consultation or discussion with interested parties prior to the submission of amendments to the Assembly, since it is solely a matter for the Assembly to decide whether to approve the amendments as submitted by the

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Tribunals. Presumably, the Assembly would, if it finds it necessary, seek further comments from the Tribunals before taking its decision, as was done for the adoption of the rules. This procedure facilitates and enhances the effective administration of the system of internal justice without the risk that the parties to disputes before the Tribunals may seek to procure the promulgation of statutory provisions and rules of procedure that suit their own vested interests rather than the interest of justice.

The process proposed by the Secretary-General, by which the Tribunals would have "to consult with the parties appearing before them", would raise a number of practical difficulties. Many of these difficulties would remain unresolved in the mechanism proposed by the Internal Justice Council.

First, while the representatives of the Secretary-General may be easily identified, are well organized and resourced, and possibly share common interests, it is much more difficult to determine who would represent the interests of potential applicants in such an exercise (e.g., the Office of Staff Legal Assistance, private attorneys regularly appearing before the Tribunals, staff unions in the various duty stations and staff members at large). Second, the many possible stakeholders on the applicants' side would probably not be in a position to submit common unified proposals and may even hold opposing views. Third, a truly inclusive consultation process would require major organizational and financial resources to ensure the participation of all those who have a right to appear before the Tribunals, particularly taking into account that these stakeholders are located in various duty stations (not only in New York, Geneva and Nairobi, but also in Vienna, Bangkok, Santiago, etc.). Fourth, an effective consultative process would probably be extremely lengthy and divert, on a long-term basis, the limited human resources at the Tribunals' disposal. Fifth, it is unclear how the proposed consultative process should be conducted.

One further problem that arises is whether the judges would be expected to engage in an open debate with the participating parties and try to reach a consensus on possible amendments. In this regard, the consultative process would entail serious risks of undermining the independence of the judiciary and the separation of powers in the system of administration of justice. Moreover, the process could convey the wrong impression that the foundational rules upon which the new formal system of administration of justice operates are open to public debate and may be modified on the initiative of one or the other of the parties appearing before the Tribunals, outside of the General Assembly.

For all these reasons, the judges of the Appeals and Dispute Tribunals consider that they should continue to discharge the functions that have been entrusted to them by the General Assembly, under their respective statutes, regarding the amendment of the rules, without the risks, costs and delays that the proposed consultative process would entail. The judges strongly affirm that, given their impartiality and professionalism, they are best placed to identify areas for improvement in the rules and make proposals for amendments in the interest of justice and in fairness to all parties, without the infliction of competing self-interests.

Finally, the judges of the Appeals and Dispute Tribunals note that the proposal may give the misleading idea that no consultation exists at present. This is not the case. The judges would like to draw the General Assembly's attention to the fact that, despite their not being obliged to consult with stakeholders, the judges of the

Dispute Tribunal have held several stakeholders' meetings, over the past 24 months, at all three duty stations. At those meetings, the representatives or stakeholders have been invited to place their concerns before the judges in a non-intimidating and discursive environment. The judges have kept a record of concerns, discussed them at their plenary meetings, and have taken them into account when considering practice directions and amendments to propose to the Assembly. As for the amendments thus far adopted by the Tribunals, they have been made in light of the experience and insight accumulated during the implementation of the existing rules.

We should be grateful if you would have the present letter circulated as a document of the General Assembly under item 143 of the agenda.

(*Signed*) Sophia **Adinyira**
President
United Nations Appeals Tribunal

(*Signed*) Memooda **Ebrahim-Carstens**
President
United Nations Dispute Tribunal